**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 24085 of 2005**

**For Approval and Signature:**

**HONOURABLE MR. JUSTICE B.J.SHETHNA**
**HONOURABLE MR.JUSTICE MD SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**SADIYABHAI TITIABHAI NINAMA & 1 - Petitioner(s)**
**Versus**
**UNION OF INDIA & 2 - Respondent(s)**

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**Appearance :**
MR YV SHAH for Petitioner(s) : 1 - 2.
RULE NOT RECD BACK for Respondent(s) : 1 - 2.
MR RAMNANDAN SINGH for Respondent(s) : 3,

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**CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA**
**and**
**HONOURABLE MR.JUSTICE MD SHAH**

**Date : 21/06/2006**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)**

1. The petitioner no.1 is father and the petitioner no.2 is son. They have filed this petition before this Court under Article 226 of the Constitution and prayed that the respondents be directed to retire the petitioner no.1-Sdiyabhai Titiabhai Ninima voluntarily from service on medical grounds and to grant all admissible retiral benefits with interest. They have also prayed that the petitioner no.2 son of the petitioner no.1 be directed to be appointed on compassionate ground as per Railway Board Scheme and under Section 47 of the Disabilities Act, 1995.

2. Petitioner no.1-Sadiyabhai Titiabhai Ninama belongs to Schedule Tribe. He was born on 1-6-1955. At a young age of 20, he was appointed as Police Constable in R.P.F. with effect from 27-3-1976. Later on, he was promoted as Head Constable and when he was about to be further promoted to the higher post, unfortunately, while on duty he met with an accident wherein he lost both his legs while preventing theft and catching thief, as all of a sudden stationary goods train started when he was attempting to catch the thief. The said accident took place on 15-5-2000. On 28-5-2000, he was produced before the Chief Medical Superintendent Western Railway, Baroda,

who examined him and found him 100% disable, and therefore, unfit as Head Constable. However, he has opined alternative sedentary job where he had not to walk long distance and to do heavy manual work. The Railways, as usual, slow in acting upon such report of the Chief Medical Superintendent and, for the first time, on 21-1-2003 by protecting his salary appointed him on the alternative post of Commercial Clerk at Godhra and asked him to undergo training at Udaipur. On receiving that letter dated 28-3-2003, immediately applicant had addressed a letter dated 1-4-2003 to the authority stating that his both legs have been amputated in the accident which took place in 2000 and no artifical legs could be used by him. Therefore, looking to his family conditions, as he was not able to travel right up to Udaipur for training, he may be allowed to voluntarily retire.

3. At this stage, Mr. Ramnandan Singh for the Railways submitted that the petitioner was provided artificial limbs. Mr. Shah for the petitioner seriously disputes the same. Be that as it may, we would not like to go into controversy whether the petitioner was provided artificial limbs or not. The fact remains that he had

lost both his legs and therefore, even with the help of artificial limbs, it will not be possible for a person aged 50 to travel alone for such a long distance from Godhra to Udaipur.

4. Unfortunately, no decision was taken on his letter dated 1-4-2003 Annexure R3 annexed to the reply affidavit for his voluntary retirement. Therefore, the petitioner made representation after representation and last representation dated 12-4-2005 was made, but without any response. Therefore, by way of last resort, he has approached this Court by way of this petition in December, 2005 and prayed for the reliefs which have been stated earlier.

5. Mr. Ramnandan Singh for the Railways was very much considerate and sympathetic towards the petitioner. He submitted that even today he can be treated as voluntarily retired from service on becoming 100% disabled in the accident which took place in 2000, but he had reservation about the appointment given to the petitioner no.2 son of the petitioner no.1 on compassionate ground, as according to him, the petitioner no.1 was found to be fit for alternative employment on

the post of Commercial Clerk by the Chief Superintendent Medical Officer. Therefore, no compassionate appointment could be given to petitioner no.2. However, learned Counsel Shri Shah for the petitioners relying on the provisions made by the Railway Board regarding appointment on compassionate grounds Annexure B, submitted that though the Chief Superintendent Medical Officer opined that the petitioner no.1 can be appointed on alternative post of Commercial Clerk having become totally disabled by losing both the legs in accident, the petitioner no.1 was totally unfit to work on the post of Commercial Clerk. The condition precedent for the appointment on the alternative post of Commercial Clerk was to go for training at Udaipur which was practically impossible for the petitioner no.1 as with this condition it was absolutely impossible for him to travel right from Godhra to Udaipur for training. Thus, in our considered opinion, though the Chief Superintendent Medical Officer was sympathetic towards the petitioner no.1, and opined that the petitioner no.1 could be appointed on the alternative post of Commercial Clerk only with a view to protect his service. In our considered opinion, he was totally unfit to work on any other post. Once we come to this conclusion, then, clause (iv) would definitely be

applicable in the instant case.

6. Under the circumstances, while recording the statement of Mr.Ramnandan Singh that the petitioner no.1 will be permitted to voluntarily retire from service with effect from 1st April, 2003, we direct the concerned authority to consider the case of the petitioner no.2 for appointment on compassionate grounds. While considering the same, the respondent-authority should not forget that in the instant case, the petitioners are from Scheduled Tribe of Ninama and the petitioner no.1 had put on unblemished career of 25 years with them as Police Constable and Head Constable and, in fact, he was due for his promotion very soon and would have been promoted, if the unfortunate accident had not taken place. The authority shall also have to keep in mind under what circumstances, the accident took place and in which he had lost both his legs. It is in discharge of his duty to prevent the pilferage or theft and while making an attempt to catch the thief, he lost both his legs. The case of such persons should be sympathetically considered by the authorities.

Before parting, we must also state that the

petitioner no.1 had filed Workmen's Compensation Case no.58/2004 which is still pending before the Commissioner of Workmen's Compensation and not decided so far because of reply being not filed by the respondents-authorities. If the reply is not filed before 31st July, 2006 before the Commissioner of Workmen's Compensation, then it will be open to the Commissioner to decide the case of the petitioner no.1 as early as possible in accordance with the law preferably by 31st December, 2006. With these observations and directions, this petition is allowed to the aforesaid extent. We hope and trust that after passing order of voluntary retirement of the petitioner no.1, all the retirement benefits would be given to the petitioner latest by 31st August, 2006 failing which the respondents-authorities shall have to pay running interest at the rate of 9 percent per annum. Rule is made absolute accordingly.

(B.J.Shethna,J.)

(M.D.Shah,J.)

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